188 (1)

Supreme Court, U.S.
FILED

10-1406 MAY 16 2011

OFFICE OF THE CLERK

Docket Number _____

In the Supreme Court of the United States

GORDON LEITCH,

Petitioner,

v.

JEFF MERKLEY,

Respondent.

On Petition for Writ of Certiorari to the Circuit Court of the State of Oregon For the County of Marion

# PETITION FOR WRIT OF CERTIORARI

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## Question Presented for Review

Did Respondent Pay the Required Candidacy Fee for the Office of United States Senator?

## Parties to the Proceeding

Gordon Leitch, Contestant at trial court, Plaintiff-Appellant at Oregon Court of Appeals, Petitioner on Review at Oregon Supreme Court, Petitioner now. David Brownlow, Contestant at the trial court level. Has not participated at any appellate level. Jeff Merkely, Contestee at trial court, Defendant-Respondent at Oregon Court of Appeals, Respondent on Review at Oregon Supreme Court, Respondent now.

Table of Contents

Question Presented for Review ..... i

Parties to the Proceeding ..... ii

Table of Contents ..... iii

Table of Authorities ..... iv

Citations of the Reports and Opinions ..... 1

Jurisdiction Statement ..... 1

Laws Involved in the Case ..... 1-2

Concise Statement of the Case ..... 2-3

Direct and Concise Argument for Issuance of the Writ ..... 3-4

Circuit Court Letter Ruling Granting Summary Judgment to Respondent . App 1 - 3

Circuit Court General Judgment ..... App 4 - 6

Court of Appeals Affirmation Without Opinion..... App 7 - 8

Oregon Supreme Court Order Denying Review ..... App 9 - 10

Table of Authorities

United States Constitution, Article I, Section 10, Clause 1 ..... 1, 3, 4

United States Constitution, Article I, Section 8, Clause 5 ..... 4

28 USC 1257..... 1

Oregon Revised Statute 249.056(1)..... 1

Oregon Revised Statute 258.016(1)..... 2

*Knox v. Lee*, 79 US 457 (1870)..... 3, 4

*Juilliard v. Greenman*, 110 US 421 (1888)..... 3

*Maryland v. Railroad Co.*, 89 US 105 (1874)..... 3, 4

## Citations of the Reports and Opinions

The Circuit Court of the State of Oregon for the County of Marion entered its General Judgment on May 21, 2009. (App 4-6.) This judgment is not reported.

The Oregon Court of Appeals affirmed without opinion the Circuit Court judgment on November 3, 2010. (App 7-8.) Disposition can be found at www.publications.ojd.state.or.us/appeals.htm#2010ops.

The Oregon Supreme Court denied review by order dated February 17, 2011. (App 9-10.) This order is not reported.

## Jurisdiction Statement

The order for which review is sought was entered February 17, 2011.

Jurisdiction is conferred by 28 USC 1257.

## Laws Involved in the Case

"No State shall ... make any Thing but gold and silver Coin a Tender in Payment of Debts ...." United States Constitution, Article I, Section 10, Clause 1.

"At the time of filing a declaration of candidacy a candidate for the following offices shall pay to the officer with whom the declaration is filed the following fee: (a) United States Senator, $150 ...." Oregon Revised Statute 249.056(1).

> "The nomination or election of any person ... may be contested by any elector entitled to vote for the person ... by any person who was a candidate at the election for the same nomination or office ... only for the following causes:
>
> (1) Deliberate and material violation of any provision of the election laws in connection with the nomination, election, approval or rejection...." Oregon Revised Statute 258.016(1).

## Concise Statement of Case

Respondent declared his candidacy for the office of United States Senator. Upon the filing of his declaration, he incurred a $150 debt to the State of Oregon.

Respondent tendered a check drawn on a bank in payment of his debt to the State of Oregon.

Petitioners, who were both electors entitled to vote for Respondent and candidates at the election for the same office, timely filed an election challenge. Petitioners' challenge alleged that Respondent had deliberately and materially violated an election law connected to his nomination.

Petitioners alleged — in their original petition to the Circuit Court and throughout the appeal process — that Respondent's tender of a check drawn on a bank was illegal and void because the check drawn on a bank was neither gold nor silver coin.

The Circuit Court granted Respondent's motion for summary judgment. The Circuit Court explained why it granted Respondent's motion in its March 18, 2009 letter. (App 1-3.)

The Circuit Court found that United States Constitution Article I, Section 10, Clause 1 does not require states to accept only gold or silver coin as payment of debts owed to the state. (App 2.)

The Circuit Court specifically relied upon *Knox v. Lee*, 79 US 457 (1870), *Juilliard v. Greenman*, 110 US 421 (1888), and *Maryland v. Railroad Co.*, 89 US 105 (1874). (App 2-3.)

## Direct and Concise Argument for Issuance of the Writ

The Oregon Courts have decided an important question of federal law — United States Constitution Article I, Section 10, Clause 1 — that has not been, but should be, settled by this Court.

*Knox v. Lee*, 79 US 457 (1870), *Juilliard v. Greenman*, 110 US 421 (1888), and *Maryland v. Railroad Co.*, 89 US 105 (1874) did not interpret or construe United States Constitution Article I, Section 10, Clause 1. Petitioner has not found any case decided by this Court that has interpreted or construed the tender provision of United States Constitution Article I, Section 10, Clause 1.

*Knox v. Lee*, 79 US 457 (1870) and *Juilliard v. Greenman*, 110 US 421 (1888) both wrongly

interpreted and construed United States Constitution Article I, Section 8, Clause 5 based on demonstrably incorrect readings of the coinage acts that preceded them. This Court incorrectly found that Congress had devalued the dollar by enacting the June 28, 1834 coinage act. *Knox v. Lee*, 79 US at 551 to 553.

This Court did not construe, interpret, or quote United States Constitution Article I, Section 10, Clause 1 in its *Maryland v. Railroad Co.*, 89 US 105 (1874) opinion.

Dated this 16th day of May 2011.

James E. Leuenberger
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503 542 7433

# APPENDIX

March 18, 2009

James E. Leuenberger
Attorney at Law
PO Box 1684
Lake Oswego, OR 97035

Michael H.Simon
Attorney at Law
1120 NW Couch Street, Tenth Floor
Portland, OR 97209-4128

Re: Leitch v. Merkley
Case 08C25848

Dear Mr. Leuenberger and Mr. Simon:

This matter came before the court on March 9th, 2009 on the parties' Cross Motions for Summary Judgment.

In 2008, Contestee Jeff Merkley was the Democratic Party candidate in Oregon for the office of United States Senator. Under Oregon election law, Contestee was required to pay the State of Oregon a $150.00 filing fee no later than the 70th day before the May 20, 2008 election. The 70th day before May 20th, 2008 was March 11, 2008. On or about March 4th, 2008, Contestee paid his filing fee by check. The Oregon Secretary of State, through its Elections Division, accepted the Contestee's check in the amount of $150.00 as full payment of his required filing fee.

Contestants now seek to invalidate the candidacy and subsequent election in November 2008 of Contestee as United States Senator for Oregon on the grounds that Contestee failed to use either gold or silver coin as his means of payment for the required filing fee. Contestants argue that Article I, section 10, of the United States Constitution forbids states from accepting payment of a state debt in anything other than gold or silver coins.

Article I, section 10 of the United States Constitution provides, in relevant part:

> No State shall enter into any treaty, alliance, or confederation; grant letters of marquee and reprisal, coin money, emit bills of credit, make any thing but gold and silver coin a term (sic) in payment of debts, pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Contestants contend that Article I, section 10 required Contestee pay the $150.00 filing fee in gold and silver coin, rather than by check.

The Court finds that Article I, section 10 does not require states to accept only gold or silver coin as payment of debts owed to the state. The United States has interpreted Section 10 as prohibiting states from declaring anything other than gold or silver coin a legal tender in payment of debts. *Julliard v. Greenman*, 110 U.S. 421, 4 S. Ct. 122 (1884); *Knox v. Lee,* 79 U.S. 457 (1870). Contrary to Contestants assertions, Section 10 does not prohibit states from accepting anything other than gold or

silver coin in the payment of debts. As determined in *Juilliard*, "Congress is authorized to establish a national currency, either in coin or paper, and to make that currency lawful money for all purposes, as regards the nation [sic] government of (sic) private individual". *Id* at 448.

Moreover, the United States Supreme Court has already rejected Contestant's assertions. In *Maryland v. Railroad Co.*, [89] U.S. 105, 112-13 (1874), the Supreme Court rejected the State of Maryland's argument that debts to the state must be [m]aid only by silver or gold coin. The Court held that the debtor's payment to the state in federal reserve notes (sic) was valid. *Id.* at 107-108. This court is bound by the United States Supreme Court's interpretation of the United States Constitution. *Baum v. Newbry*, 200 Or. 576, 584-85, 267 P.2d 220 (1954).

Contestee has tendered a check to the State of Oregon, which is considered a valid form of payment of a debt to the State. Accordingly, Contestant's Motion for Summary Judgment is denied and Contestee's Motion for Summary Judgment is granted.

Very Truly Yours,

*/s/*

Joseph C. Guimond
Circuit Court Judge

App 4

In the Circuit Court for the State of Oregon
For the County of Marion

| | |
|---|---|
| Gordon Leitch and David Brownlow,<br><br>Contestants,<br><br>v.<br><br>Jeff Merkley,<br><br>Contestee. | Case No. 08C-25848<br><br>General Judgment<br><br>Judge: Hon. Joseph C. Guimond |

The Court, having denied Contestants Gordon Leitch's and David Brownlow's Motion for Summary Judgment and having granted Contestee Jeff Merkley's Cross-Motion for Summary Judgment, it is therefore ORDERED AND ADJUDGED that Contestants' claims against Contestee are dismissed with prejudice.

It is also futher ORDERED AND ADJUDGED as follows:

MONEY AWARD

1. The name and address of the judgment creditor are:
Jeff Merkley
c/o Michael H. Simon
Perkins Coie LLP
1120 NW Couch St., 10th Floor
Portland, OR 97209

2. The name, address, and telephone number of the judgment creditor's attorney are:
Michael H. Simon
Perkins Coie, LLP
1120 NW Couch St., 10th Floor
Portland, OR 97209
(503) 727-2018

3. The names and addresses of the judgment debtors are:
Gordon Leitch
885 SW Red Hills Drive
Dundee, OR 97115

David Brownlow
PO Box 2965
Clackamas, OR 97015

4. The name and address of the judgment debtor's attorney are:
James E. Leuenberger, OSB 891542
James E. Leuenberger, P.C.
4500 S.W. Kruse Way, Suite 100
P.O. Box 1684
Lake Oswego, OR 97035

5. The judgment creditor is not aware of any person or public body that is known by the judgment creditor to be any entitled to any portion of the money award.

6. The amount of the money judgment is $8,000.00, which consists solely of prevailing party attorney fees awarded pursuant to ORS 258.046.

7. The judgment creditor is also owed post-judgment simple interest, accruing at the rate of nine percent (9%) per annum from the date of entry of judgment.

IT IS SO ORDERED AND ADJUDGED this 20 day of May, 2009.

/s/

Honorable Joseph C. Guimond
Circuit Court Judge

Submitted by:

PERKINS COIE LLP

By /s/
Michael H. Simon, OSB No. 860908
MSimon@perkinscoie.com
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Attorneys for Contestee Jeff Merkley

FILED: November 03, 2010

IN THE COURT OF APPEALS OF THE STATE OF OREGON

GORDON LEITCH,
Plaintiff-Appellant,

and

DAVID BROWNLOW,
Plaintiff,

v.

JEFF MERKLEY,
Defendant-Respondent.

Marion County Circuit Court
08C25848

A142496

Joseph C. Guimond, Judge.

Argued and submitted on October 13, 2010.

Before Landau, Presiding Judge, and Ortega, Judge, and Sercombe, Judge.

Attorney for Appellant: James E. Leuenberger.

Attorney for Respondent: Michael H. Simon.

AFFIRMED WITHOUT OPINION

# DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

[ ] No costs allowed.
[x] Costs allowed, payable by Appellant.

IN THE SUPREME COURT OF THE STATE OF OREGON

GORDON LEITCH,
Plaintiff-Appellant,
Petitioner on Review,

and

DAVID BROWNLOW,
Plaintiff,

v.

JEFF MERKLEY,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A142496

S058995

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

February 17, 2011
Date

/s/ Paul J. DeMuniz
Chief Justice

**Landau, J. not participating

c: James E. Leuenberger
Michael H. Simon